

MICHIGAN LIQUOR CONTROL CODE OF 1998 (EXCERPT)

Act 58 of 1998

CHAPTER 1

436.1101 Short title.

Sec. 101. This act shall be known and may be cited as the "Michigan liquor control code of 1998".

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.1103 Meanings of words and phrases.

Sec. 103. For the purposes of this act, the words and phrases defined in this chapter have the meanings ascribed to them in this chapter, unless the context requires otherwise.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.1105 Definitions; A, B.

Sec. 105. (1) "Alcohol" means the product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

(2) "Alcohol vapor device" means any device that provides for the use of air or oxygen bubbled through alcoholic liquor to produce a vapor or mist that allows the user to inhale this alcoholic vapor through the mouth or nose.

(3) "Alcoholic liquor" means any spirituous, vinous, malt, or fermented liquor, powder, liquids, and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume that are fit for use for food purposes or beverage purposes as defined and classified by the commission according to alcoholic content as belonging to 1 of the varieties defined in this chapter.

(4) "Authorized distribution agent" means a person approved by the commission to do 1 or more of the following:

(a) To store spirits owned by a supplier of spirits or the commission.

(b) To deliver spirits sold by the commission to retail licensees.

(c) To perform any function needed to store spirits owned by a supplier of spirits or by the commission or to deliver spirits sold by the commission to retail licensees.

(5) "Bar" means a barrier or counter at which alcoholic liquor is sold to, served to, or consumed by customers.

(6) "Beer" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops, or other cereal in potable water.

(7) "Brand" means any word, name, group of letters, symbol, trademark, or combination thereof adopted and used by a supplier to identify a specific beer, malt beverage, wine, mixed wine drink, or mixed spirit drink product and to distinguish that product from another beer, malt beverage, wine, mixed wine drink, or mixed spirit drink product that is produced or marketed by that or another supplier. As used in this section and notwithstanding sections 305(2)(j) and 403(2)(j), "supplier" means a brewer, an outstate seller of beer, a wine maker, a small wine maker, an outstate seller of wine, a manufacturer of mixed wine drink, an outstate seller of a mixed wine drink, a mixed spirit drink manufacturer, or an outstate seller of mixed spirit drink.

(8) "Brand extension" means any brand which incorporates all or a substantial part of the unique features of a preexisting brand of the same supplier. As used in this section and notwithstanding sections 305(2)(j) and 403(2)(j), "supplier" means a brewer, an outstate seller of beer, a wine maker, a small wine maker, an outstate seller of wine, a manufacturer of mixed wine drink, an outstate seller of a mixed wine drink, a mixed spirit drink manufacturer, or an outstate seller of mixed spirit drink.

(9) "Brandy" means an alcoholic liquor as defined in 27 CFR 5.22(d) (1980).

(10) "Brandy manufacturer" means a wine maker or a small wine maker licensed under this act to manufacture, rectify, or blend brandy only and no other spirit. The commission may approve a brandy manufacturer to sell brandy that it manufactures, blends or rectifies, or both, at its licensed premises or at other premises authorized in this act.

(11) "Brewer" means a person located in this state that is licensed to manufacture and sell to licensed wholesalers beer produced by it.

(12) "Brewpub" means a license issued in conjunction with a class C, tavern, class A hotel, or class B hotel license that authorizes the person licensed with the class C, tavern, class A hotel, or class B hotel to manufacture and brew not more than 18,000 barrels of beer per calendar year in Michigan and sell at those licensed premises the beer produced for consumption on or off the licensed brewery premises in the manner

provided for in sections 405 and 407.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2005, Act 320, Imd. Eff. Dec. 27, 2005;—Am. 2014, Act 353, Imd. Eff. Oct. 17, 2014.

436.1107 Definitions; C to L.

Sec. 107. (1) "Cash" means money in hand, bank notes, demand deposits at a bank, or legal tender, which a creditor must accept according to law. Cash does not include call loans, postdated checks, or promissory notes.

(2) "Class C license" means a place licensed to sell at retail beer, wine, mixed spirit drink, and spirits for consumption on the premises.

(3) "Class G-1 license" means a place licensed to sell at retail beer, wine, mixed spirit drink, and spirits for consumption on the premises at a golf course having at least 18 holes that measure at least 5,000 yards and which license is issued only to a facility which permits member access by means of payments that include annual paid membership fees.

(4) "Class G-2 license" means a place licensed to sell at retail beer and wine for consumption on the premises at a golf course having at least 18 holes that measure at least 5,000 yards and which license is issued only to a facility which permits member access by means of payments that include annual paid membership fees.

(5) "Club" means a nonprofit association, whether incorporated or unincorporated, organized for the promotion of some common purpose, the object of which is owning, hiring, or leasing a building, or space in a building, of an extent and character as in the judgment of the commission may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests, but does not include an association organized for a commercial or business purpose.

(6) "Commission" means the liquor control commission provided for and created in section 209.

(7) "Church" means an entire house or structure set apart primarily for use for purposes of public worship, and which is tax exempt under the laws of this state, and in which religious services are held and with which a clergyman is associated, and the entire structure of which is kept for that use and not put to any other use inconsistent with that use.

(8) "Distiller" means any person licensed to manufacture and sell spirits or alcohol, or both, of any kind.

(9) "Hotel" means a building or group of buildings located on the same or adjoining pieces of real property, which provide lodging to travelers and temporary residents and which may also provide food service and other goods and services to registered guests and to the public.

(10) "Class A hotel" means a hotel licensed by the commission to sell beer and wine for consumption on the premises only, which provides for the rental of, and maintains the availability for rental of, not less than 25 bedrooms if located in a local governmental unit with a population of less than 175,000 or not less than 50 bedrooms if located in a local governmental unit with a population of 175,000 or more.

(11) "Class B hotel" means a hotel licensed by the commission to sell beer, wine, mixed spirit drink, and spirits for consumption on the premises only, which provides for the rental of, and maintains the availability for rental of, not less than 25 bedrooms if located in a local governmental unit with a population of less than 175,000 or not less than 50 bedrooms if located in a local governmental unit with a population of 175,000 or more.

(12) "License" means a contract between the commission and the licensee granting authority to that licensee to manufacture and sell, or sell, or warehouse alcoholic liquor in the manner provided by this act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2001, Act 223, Eff. Mar. 22, 2002.

436.1109 Definitions; M to O.

Sec. 109. (1) "Manufacturer" means a person engaged in the manufacture of alcoholic liquor, including, but not limited to, a distiller, a rectifier, a wine maker, and a brewer.

(2) "Master distributor" means a wholesaler that acts in the same or similar capacity as a brewer, wine maker, outstate seller of wine, or outstate seller of beer for a brand or brands of beer or wine to other wholesalers on a regular basis in the normal course of business.

(3) "Micro brewer" means a brewer that produces in total less than 60,000 barrels of beer per year and that may sell the beer produced to consumers at the licensed brewery premises for consumption on or off the licensed brewery premises and to retailers as provided in section 203. In determining the 60,000-barrel threshold, all brands and labels of a brewer, whether brewed in this state or outside this state, shall be combined and all facilities for the production of beer that are owned or controlled by the same person shall be treated as a single facility.

(4) "Minor" means an individual less than 21 years of age.

(5) "Mixed spirit drink" means a drink produced and packaged or sold by a mixed spirit drink manufacturer or an outstate seller of mixed spirit drink that contains 10% or less alcohol by volume consisting of spirits mixed with nonalcoholic beverages or flavoring or coloring materials and that may also contain 1 or more of the following:

- (a) Water.
- (b) Fruit juices.
- (c) Fruit adjuncts.
- (d) Sugar.
- (e) Carbon dioxide.
- (f) Preservatives.

(6) "Mixed spirit drink manufacturer" means any person licensed under this act to manufacture mixed spirit drink in this state and to sell mixed spirit drink to a wholesaler. For purposes of rules promulgated by the commission, a mixed spirit drink manufacturer shall be treated as a wine manufacturer but is subject to the rules applicable to spirits for manufacturing and labeling.

(7) "Mixed wine drink" means a drink or similar product marketed as a wine cooler that contains less than 7% alcohol by volume, consists of wine and plain, sparkling, or carbonated water, and contains any 1 or more of the following:

- (a) Nonalcoholic beverages.
- (b) Flavoring.
- (c) Coloring materials.
- (d) Fruit juices.
- (e) Fruit adjuncts.
- (f) Sugar.
- (g) Carbon dioxide.
- (h) Preservatives.

(8) "Outstate seller of beer" means a person licensed by the commission to sell beer that has not been manufactured in this state to a wholesaler in this state in accordance with rules promulgated by the commission.

(9) "Outstate seller of mixed spirit drink" means a person licensed by the commission to sell mixed spirit drink that has not been manufactured in this state to a wholesaler in this state in accordance with rules promulgated by the commission. For purposes of rules promulgated by the commission, an outstate seller of mixed spirit drink shall be treated as an outstate seller of wine but is subject to the rules applicable to spirits for manufacturing and labeling.

(10) "Outstate seller of wine" means a person licensed by the commission to sell wine that has not been manufactured in this state to a wholesaler in this state in accordance with rules promulgated by the commission and to sell sacramental wine as provided in section 301.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2010, Act 213, Imd. Eff. Nov. 17, 2010;—Am. 2014, Act 42, Imd. Eff. Mar. 25, 2014.

Constitutionality: In *Granholm v Heald*, 544 US 460 (2005), the United States Supreme Court held that Michigan laws regulating direct shipment of alcohol to in-state consumers discriminated against interstate commerce in violation of clause 3 of section 8 of article 1 of the United States Constitution, and that the powers granted to states under the 21st Amendment to the United States Constitution do not authorize violation of other constitutional provisions.

436.1111 Definitions; P to S.

Sec. 111. (1) "Person" means an individual, firm, partnership, limited partnership, association, limited liability company, or corporation.

(2) "Primary source of supply" means, in the case of domestic spirits, the distiller, producer, owner of the commodity at the time it becomes a marketable product, or bottler, or the exclusive agent of any such person and, in the case of spirits imported into the United States, either the foreign distiller, producer, owner of the bottler, or the prime importer for, or the exclusive agent in the United States of, the foreign distiller, producer, owner, or the bottler.

(3) "Professional account" means an account established for a person by a class C licensee or tavern licensee whose major business is the sale of food, by which the licensee extends credit to the person for not more than 30 days.

(4) "Residence" means the premises in which a person resides permanently.

(5) "Retailer" means a person licensed by the commission who sells to the consumer in accordance with rules promulgated by the commission. Retailer includes a brewpub but does not include a manufacturer or supplier, as defined in section 603, that is allowed as a condition of its license to sell to consumers in this

state.

(6) "Sacramental wine" means wine containing not more than 24% of alcohol by volume which is used for sacramental purposes.

(7) "Sale" includes the exchange, barter, traffic, furnishing, or giving away of alcoholic liquor. In the case of a sale in which a shipment or delivery of alcoholic liquor is made by a common or other carrier, the sale of the alcoholic liquor is considered to be made in the county within which the delivery of the alcoholic liquor is made by that carrier to the consignee or his or her agent or employee, and venue for the prosecution for that sale may be in the county or city where the seller resides or from which the shipment is made or at the place of delivery.

(8) "School" includes buildings used for school purposes to provide instruction to children in grades kindergarten through 12, when that instruction is provided by a public, private, denominational, or parochial school, except those buildings used primarily for adult education or college extension courses. School does not include a proprietary trade or occupational school.

(9) "Small distiller" means a manufacturer of spirits annually manufacturing in Michigan not exceeding 60,000 gallons of spirits, of all brands combined.

(10) "Small wine maker" means a wine maker manufacturing or bottling not more than 50,000 gallons of wine in 1 calendar year.

(11) "Special license" means a contract between the commission and the special licensee granting authority to that licensee to sell beer, wine, mixed spirit drink, or spirits. The license shall be granted only to such persons and such organization and for such period of time as the commission shall determine so long as the person or organization is able to demonstrate an existence separate from an affiliated umbrella organization. If such an existence is demonstrated, the commission shall not deny a special license solely by the applicant's affiliation with an organization that is also eligible for a special license.

(12) "Specially designated distributor" means, subject to section 534, a person engaged in an established business licensed by the commission to distribute spirits and mixed spirit drink in the original package for the commission for consumption off the premises.

(13) "Specially designated merchant" means a person to whom the commission grants a license to sell beer or wine, or both, at retail for consumption off the licensed premises.

(14) "Spirits" means a beverage that contains alcohol obtained by distillation, mixed with potable water or other substances, or both, in solution, and includes wine containing an alcoholic content of more than 21% by volume, except sacramental wine and mixed spirit drink.

(15) "State liquor store" means a store established by the commission under this act for the sale of spirits in the original package for consumption off the premises.

(16) "Supplier of spirits" means a vendor of spirits, a manufacturer of spirits, or a primary source of supply.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2008, Act 218, Imd. Eff. July 16, 2008;—Am. 2010, Act 213, Imd. Eff. Nov. 17, 2010.

***** 436.1113 THIS SECTION IS REPEALED BY ACT 269 OF 2005 EFFECTIVE WHEN CONDITIONS APPLIED BY ENACTING SECTION 2(1) OF ACT 269 OF 2005 ARE MET: See compiler's note following section *****

436.1113 Definitions; T to W.

Sec. 113. (1) "Tavern" means any place licensed to sell at retail beer and wine for consumption on the premises only.

(2) "Vehicle" means any means of transportation by land, by water, or by air.

(3) "Vendor" means a person licensed by the commission to sell alcoholic liquor.

(4) "Vendor of spirits" means a person selling spirits to the commission.

(5) "Warehouse" means a premises or place primarily constructed, used, or provided with facilities for the storage in transit or other temporary storage of perishable goods or for the conduct of a warehousing business, or for both.

(6) "Warehouser" means a licensee authorized by the commission to store alcoholic beverages, but prohibited from making sales or deliveries to retailers unless the licensee is also the holder of a wholesaler or manufacturer license issued by the commission.

(7) "Wholesaler" means a person who is licensed by the commission and sells beer, wine, or mixed spirit drink only to retailers or other licensees, and who sells sacramental wine as provided in section 301. A wholesaler includes a person who may also act as a master distributor unless prohibited from doing so by its supplier or manufacturer in a written agreement required by either section 305(3)(i) or 403(3)(i) and, by

mutual agreement with an outstate seller of beer or wine, can be authorized by the outstate seller of beer or wine to do, in the manner prescribed by the commission, either or both of the following:

(a) Register with the state of Michigan the labels of the outstate seller of beer or wine.

(b) On behalf of the outstate seller of beer or wine, collect excise taxes levied by the state of Michigan and remit the taxes to the commission.

(8) "Wine" means the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than 21% of alcohol by volume, including fermented fruit juices other than grapes and mixed wine drinks.

(9) "Wine maker" means any person licensed by the commission to manufacture wine and to sell that wine to a wholesaler, to a consumer by direct shipment, at retail on the licensed winery premises, to sell that wine to a retailer, and as provided for in section 537.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2005, Act 269, Imd. Eff. Dec. 16, 2005;—Am. 2010, Act 213, Imd. Eff. Nov. 17, 2010.

Constitutionality: In *Granholm v Heald*, 544 US 460 (2005), the United States Supreme Court held that Michigan laws regulating direct shipment of alcohol to in-state consumers discriminated against interstate commerce in violation of clause 3 of section 8 of article 1 of the United States Constitution, and that the powers granted to states under the 21st Amendment to the United States Constitution do not authorize violation of other constitutional provisions.

Compiler's note: Enacting sections 2 and 3 of Act 269 of 2005 provide:

"Enacting section 2. (1) If any provision of section 113 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1113, as amended by this amendatory act, is held to be unconstitutional by a court of competent jurisdiction and the allowable time for filing an appeal has expired or the appellant has exhausted all of his or her avenues of appeal, section 113 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1113, is repealed.

"(2) Section 113a of the Michigan liquor control code of 1998, 1998 PA 58, as added by this amendatory act, shall not take effect unless section 113 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1113, is held unconstitutional or repealed pursuant to subsection (1).

"Enacting section 3. If an appellate court declares this amendatory act unconstitutional, then it is the intent of the legislature that a good faith effort be made to amend section 305 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1305, to make it less burdensome for a small winery to terminate an agreement with a wholesaler."

***** 436.1113a.added THIS ADDED SECTION IS EFFECTIVE WHEN CONDITIONS APPLIED BY ENACTING SECTION 2(2) OF ACT 269 OF 2005 ARE MET: See compiler's note following section *****

436.1113a.added Additional definitions.

Sec. 113a. (1) "Tavern" means any place licensed to sell at retail beer and wine for consumption on the premises only.

(2) "Vehicle" means any means of transportation by land, by water, or by air.

(3) "Vendor" means a person licensed by the commission to sell alcoholic liquor.

(4) "Vendor of spirits" means a person selling spirits to the commission.

(5) "Warehouse" means a premises or place primarily constructed, used, or provided with facilities for the storage in transit or other temporary storage of perishable goods or for the conduct of a warehousing business, or for both.

(6) "Warehouser" means a licensee authorized by the commission to store alcoholic liquor, but prohibited from making sales or deliveries to retailers unless the licensee is also the holder of a wholesaler license issued by the commission.

(7) "Wholesaler" means a person who is licensed by the commission and sells beer, wine, or mixed spirit drink only to retailers or other licensees, and who sells sacramental wine as provided in section 301. A wholesaler includes a person who may also act as a master distributor unless prohibited from doing so by its supplier or manufacturer in a written agreement required by either section 305(3)(i) or 403(3)(i) and, by mutual agreement with an outstate seller of beer or wine, can be authorized by the outstate seller of beer or wine to do, in the manner provided by the commission, either or both of the following:

(a) Register with the state of Michigan the labels of the outstate seller of beer or wine.

(b) On behalf of the outstate seller of beer or wine, collect excise taxes levied by the state of Michigan and remit the taxes to the commission.

(8) "Wine" means the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than 21% of alcohol by volume, including fermented fruit juices other than grapes and mixed wine drinks.

(9) "Wine maker" means any person licensed by the commission to manufacture wine, to sell that wine to a wholesaler, to sell that wine by direct shipment to a consumer, at retail on the licensed winery premises, and as provided for in section 537 but not to sell wine to a retailer.

History: Add. 2005, Act 269, Eff. (pending);—Am. 2010, Act 213, Imd. Eff. Nov. 17, 2010.

Compiler's note: Enacting sections 2 and 3 of Act 269 of 2005 provide:

"Enacting section 2. (1) If any provision of section 113 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1113, as amended by this amendatory act, is held to be unconstitutional by a court of competent jurisdiction and the allowable time for filing an appeal has expired or the appellant has exhausted all of his or her avenues of appeal, section 113 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1113, is repealed.

"(2) Section 113a of the Michigan liquor control code of 1998, 1998 PA 58, as added by this amendatory act, shall not take effect unless section 113 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1113, is held unconstitutional or repealed pursuant to subsection (1).

"Enacting section 3. If an appellate court declares this amendatory act unconstitutional, then it is the intent of the legislature that a good faith effort be made to amend section 305 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1305, to make it less burdensome for a small winery to terminate an agreement with a wholesaler."